

nominally impacts at the corner of the block at a minimum of 44 feet per second velocity. The cinder block must be of composition referenced in American Society for Testing and Materials (ASTM) Specification C33L or ASTM C90.

(11) The Test Specimen for glazing material that is intended for use only in side facing glazing locations shall be subjected to a Type II test regimen consisting of the following tests:

(i) Ballistic Impact in which a standard 22 caliber long rifle lead bullet of 40 grains in weight impacts at a minimum of 960 feet per second velocity.

(ii) Large Object Impact in which a cinder block of 24 lbs minimum weight with dimensions of 8 inches by 8 inches by 16 inches nominally impacts at the corner of the block at a minimum of 12 feet per second velocity. The cinder block must be of the composition referenced in ASTM C33L or ASTM C90.

(12) Three different test specimens must be subjected to the ballistic impact portion of these tests.

(13) Two different test specimens must be subjected to the large object impact portion of these tests.

(14) A material so tested must perform so that:

(i) there shall be no penetration of the back surfaces (side closest to Witness Plate) of the Target Material by the projectile. Partial penetration of the impact (front) surface of the Target Material does not constitute a failure; and

(ii) there shall be no penetration of particles from the back side of the Target Material through the back side of the prescribed Witness Plate.

(15) Test specimens must consecutively pass the required number of tests at the required minimum velocities. Individual tests resulting in failures at greater than the required minimum velocities may be repeated but a failure of an individual test at less than the minimum velocity shall result in termination of the total test and failure of the material.

(16) After successful completion of the prescribed set of required consecutive tests, a manufacturer may certify in writing that a particular glazing material meets the requirements of these standards.

c. Material Identification

(1) Each individual unit of glazing material shall be permanently marked, prior to installation, to indicate that this type of material has been successfully tested as set forth in this appendix and that marking shall be done in such a manner that it is clearly visible after the material has been installed.

(2) Each individual unit of a glazing material that has successfully passed the Type I testing regimen shall be marked to indicate:

(i) "FRA Type I" material;

(ii) the manufacturer of the material;

(iii) the type or brand identification of the material.

(3) Each individual unit of a glazing material that has successfully passed the Type II testing regimen shall be marked to indicate:

(i) "FRA Type II" material;

(ii) the manufacturer of the material;

(iii) the type or brand identification of the material.

APPENDIX B TO PART 223—SCHEDULE OF CIVIL PENALTIES¹

Section	Violation	Willful violation
223.9 New or rebuilt Equipment:		
(a) Locomotives	\$2,500	\$5,000
(b) Caboosees	2,500	5,000
(c) Passenger cars	2,500	5,000
(d) (1), (d)(2):		
(i) Window not marked or instructions not posted	2,500	5,000
(ii) Window improperly marked or instructions improperly posted	1,000	2,000
223.11(c) Existing locomotives	2,500	5,000
(d) Repair of window	1,000	2,000
223.13(c) Existing cabooses	2,500	5,000
(d) Repair of window	1,000	2,000
223.15(c) Existing passenger cars	2,500	5,000
(d) Repair of window	1,000	2,000
223.17 Identification of units ...	1,000	1,500

¹A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$22,000 for any violation where circumstances warrant. See 49 U.S.C. 21301, 21304, and 49 CFR part 209, appendix A. Further designations, not found in the CFR citation for certain provisions are FRA Office of Chief Counsel computer codes added as a suffix to the CFR citation and used to expedite imposition of civil penalties for violations. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined designation cited in the penalty demand letter.

[63 FR 24676, May 4, 1998]

PART 225—RAILROAD ACCIDENTS/ INCIDENTS: REPORTS CLASSIFICATION, AND INVESTIGATIONS

Sec.

225.1 Purpose.

225.3 Applicability.

225.5 Definitions.

225.7 Public examination and use of reports.

225.9 Telephonic reports of certain accidents/incidents.

225.11 Reporting of accidents/incidents.

225.12 Rail Equipment Accident/Incident Reports alleging employee human factor as cause; Employee Human Factor Attachment; notice to employee; employee supplement.

225.13 Late reports.

Federal Railroad Administration, DOT

§ 225.3

225.15 Accidents/incidents not to be reported.
225.17 Doubtful cases; alcohol or drug involvement.
225.19 Primary groups of accidents/incidents.
225.21 Forms.
225.23 Joint operations.
225.25 Recordkeeping.
225.27 Retention of records.
225.29 Penalties.
225.31 Investigations.
225.33 Internal Control Plans.
225.35 Access to records and reports.
225.37 Magnetic media transfer and electronic submission.

APPENDIX A TO PART 225—SCHEDULE OF CIVIL PENALTIES

APPENDIX B TO PART 225—PROCEDURE FOR DETERMINING REPORTING THRESHOLD

AUTHORITY: 49 U.S.C. 20103, 20107, 20901, 21301–21302, and 49 CFR 1.49.

SOURCE: 39 FR 43224, Dec. 11, 1974, unless otherwise noted.

§ 225.1 Purpose.

The purpose of this part is to provide the Federal Railroad Administration with accurate information concerning the hazards and risks that exist on the Nation's railroads. FRA needs this information to effectively carry out its regulatory responsibilities under 49 U.S.C. chapters 201–213. FRA also uses this information for determining comparative trends of railroad safety and to develop hazard elimination and risk reduction programs that focus on preventing railroad injuries and accidents. Issuance of these regulations under the federal railroad safety laws and regulations preempts States from prescribing accident/incident reporting requirements. Any State may, however, require railroads to submit to it copies of accident/incident and injury/illness reports filed with FRA under this part, for accidents/incidents and injuries/illnesses which occur in that State.

[61 FR 30967, June 18, 1996]

§ 225.3 Applicability.

(a) Except as provided in paragraphs (b), (c), and (d), this part applies to all railroads except—

(1) A railroad that operates freight trains only on track inside an installation which is not part of the general railroad system of transportation or that owns no track except for track

that is inside an installation that is not part of the general railroad system of transportation and used for freight operations.

(2) Rail mass transit operations in an urban area that are not connected with the general railroad system of transportation.

(3) A railroad that exclusively hauls passengers inside an installation that is insular or that owns no track except for track used exclusively for the hauling of passengers inside an installation that is insular. An operation is not considered insular if one or more of the following exists on its line:

(i) A public highway-rail grade crossing that is in use;

(ii) An at-grade rail crossing that is in use;

(iii) A bridge over a public road or waters used for commercial navigation; or

(iv) A common corridor with a railroad, *i.e.*, its operations are within 30 feet of those of any railroad.

(b) The Internal Control Plan requirements in § 225.33(a)(3) through (10) do not apply to—

(1) Railroads that operate or own track on the general railroad system of transportation that have 15 or fewer employees covered by the hours of service law (49 U.S.C. 21101–21107) and

(2) Railroads that operate or own track exclusively off the general system.

(c) The recordkeeping requirements regarding accountable injuries and illnesses and accountable rail equipment accidents/incidents found in § 225.25(a) through (g) do not apply to—

(1) Railroads that operate or own track on the general railroad system of transportation that have 15 or fewer employees covered by the hours of service law (49 U.S.C. 21101–21107) and

(2) Railroads that operate or own track exclusively off the general system.

(d) All requirements in this part to record or report an injury or illness incurred by any classification of person that results from a non-train incident do not apply to railroads that operate or own track exclusively off the general railroad system of transportation,

unless the non-train incident involves in-service on-track equipment.

[61 FR 30967, June 18, 1996, as amended at 61 FR 67490, Dec. 23, 1996]

§ 225.5 Definitions.

As used in this part—

Accident/incident means:

(1) Any impact between railroad on-track equipment and an automobile, bus, truck, motorcycle, bicycle, farm vehicle or pedestrian at a highway-rail grade crossing;

(2) Any collision, derailment, fire, explosion, act of God, or other event involving operation of railroad on-track equipment (standing or moving) that results in reportable damages greater than the current reporting threshold to railroad on-track equipment, signals, track, track structures, and roadbed;

(3) Any event arising from the operation of a railroad which results in:

(i) Death to any person;

(ii) Injury to any person that requires medical treatment;

(iii) Injury to a railroad employee that results in:

(A) A day away from work;

(B) Restricted work activity or job transfer; or

(C) Loss of consciousness; or

(4) Occupational illness.

Accountable rail injury or illness means any condition, not otherwise reportable, of a railroad worker that is associated with an event, exposure, or activity in the work environment that causes or requires the worker to be examined or treated by a qualified health care professional. Such treatment would usually occur at a location other than the work environment; however, it may be provided at any location, including the work site.

Accountable rail equipment accident/incident means any event not otherwise reportable, involving the operation of on-track equipment that causes physical damage to either the on-track equipment or the track upon which such equipment was operated and that requires the removal or repair of rail equipment from the track before any rail operations over the track can continue. An accountable rail equipment accident/incident, if not tended to, thus would disrupt railroad service. Examples of "disruption of service" would

include: loss of main track; one or more derailed wheels; any train failing to arrive or depart at its scheduled time; one or more cars or locomotives taken out of service; or rerouting trains due to a damaged car or locomotive.

Arising from the operation of a railroad includes all activities of a railroad that are related to the performance of its rail transportation business.

Day away from work is any day subsequent to the day of the injury or diagnosis of occupational illness that a railroad employee does not report to work for reasons associated with his or her condition.

Day of restricted work activity is any day that a employee is restricted in his or her job following the day of the injury or diagnosis of occupational illness.

Employee human factor includes any of the accident causes signified by the train accident cause codes listed under "Train Operation—Human Factors" in the current "FRA Guide for Preparing Accidents/Incidents Reports," except for those train accident cause codes pertaining to non-railroad workers. For purposes of this definition "employee" includes the classifications of Worker on Duty—Employee, Employee not on Duty, Worker on Duty—Contractor, and Worker on Duty—Volunteer.

Establishment means a single physical location where workers report to work, where railroad business is conducted, or where services or operations are performed. Examples are: a division office, general office, repair or maintenance facility, major switching yard or terminal. For employees who are engaged in dispersed operations, such as signal or track maintenance workers, an "establishment" is typically a location where work assignments are initially made and oversight responsibility exists, e.g., the establishment where the signal supervisor or roadmaster is located.

FRA representative means the Associate Administrator for Safety, FRA; the Associate Administrator's delegate (including a qualified State inspector acting under part 212 of this chapter); the Chief Counsel, FRA; or the Chief Counsel's delegate.

Highway-rail grade crossing means a location where a public highway, road, street, or private roadway, including associated sidewalks and pathways, crosses one or more railroad tracks at grade.

Joint operations means rail operations conducted on a track used jointly or in common by two or more railroads subject to this part or operation of a train, locomotive, car, or other on-track equipment by one railroad over the track of another railroad.

Medical treatment includes any medical care or treatment beyond "first aid" regardless of who provides such treatment. Medical treatment does not include diagnostic procedures, such as X-rays and drawing blood samples. Medical treatment also does *not* include preventive emotional trauma counseling provided by the railroad's employee counseling and assistance officer *unless* the participating worker has been diagnosed as having a mental disorder that was significantly caused or aggravated by an accident/incident and this condition requires a regimen of treatment to correct.

Non-train incident means an event that results in a reportable casualty, but does not involve the movement of on-track equipment nor cause reportable damage above the threshold established for train accidents.

Occupational illness means any abnormal condition or disorder, of any person who falls under the definition for the classifications of Worker on Duty—Employee, Worker on Duty—Contractor, or Worker on Duty—Volunteer, other than one resulting from injury, caused by environmental factors associated with the person's railroad employment, including, but not limited to, acute or chronic illnesses or diseases that may be caused by inhalation, absorption, ingestion, or direct contact.

Person includes all categories of entities covered under 1 U.S.C. 1, including, but not limited to, a railroad; any manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any passenger; any trespasser or nontrespasser; any independent contractor providing goods or services to a

railroad; any volunteer providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor.

Qualified health care professional is a health care professional operating within the scope of his or her license, registration, or certification. For example, an otolaryngologist is qualified to diagnose a case of noise-induced hearing loss and identify potential causal factors, but may not be qualified to diagnose a case of repetitive motion injuries. In addition to licensed physicians, the term *qualified health care professional* includes members of other occupations associated with patient care and treatment such as chiropractors, podiatrists, physician's assistants, psychologists, and dentists.

Railroad means a person providing railroad transportation.

Railroad transportation means any form of non-highway ground transportation that run on rails or electro-magnetic guideways, including commuter or other short-haul railroad passenger service in a metropolitan or suburban area, as well as any commuter railroad service that was operated by the Consolidated Rail Corporation as of January 1, 1979, and high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

Train accident means any collision, derailment, fire, explosion, act of God, or other event involving operation of railroad on-track equipment (standing or moving) that results in damages greater than the current reporting threshold to railroad on-track equipment, signals, track, track structures, and roadbed.

Train incident means any event involving the movement of on-track equipment that results in a reportable casualty but does not cause reportable damage above the current threshold established for train accidents.

Work environment is the physical location, equipment, materials processed

§ 225.7

or used, and activities of a railroad employee associated with his or her work, whether on or off the railroad's property.

Work related means related to any incident, activity, exposure, or the like occurring within the work environment.

[61 FR 30968, June 18, 1996, as amended at 61 FR 59371, Nov. 22, 1996; 61 FR 67490, Dec. 23, 1996]

§ 225.7 Public examination and use of reports.

(a) Accident/Incident reports made by railroads in compliance with these rules shall be available to the public in the manner prescribed by part 7 of this title. Accident/Incident reports may be inspected at the Office of Safety, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590. Written requests for a copy of a report should be addressed to the Freedom of Information Officer, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590, and be accompanied by the appropriate fee prescribed in part 7 of this title. To facilitate expedited handling, each request should be clearly marked "Request for Accident/Incident Report."

(b) 49 U.S.C. 20903 provides that monthly reports filed by railroads under § 225.11 may not be admitted as evidence or used for any purpose in any action for damages growing out of any matters mentioned in these monthly reports. The Employee Human Factor Attachment, Notice, and Employee Supplement under § 225.12 are part of the reporting railroad's accident report to FRA pursuant to the 49 U.S.C. 20901 and, as such, shall not "be admitted as evidence or used for any purpose in any suit or action for damages growing out of any matter mentioned in said report * * *." 49 U.S.C. 20903.

[39 FR 43224, Dec. 11, 1974, as amended at 51 FR 47019, Dec. 30, 1986; 53 FR 28601, July 28, 1988; 55 FR 37827, Sept. 13, 1990; 55 FR 52487, Dec. 21, 1990; 61 FR 30969, June 18, 1996]

49 CFR Ch. II (10–1–99 Edition)

§ 225.9 Telephonic reports of certain accidents/incidents.^{1, 2}

(a) Each railroad must report immediately by toll free telephone, Area Code 800-424-0201, whenever it learns of the occurrence of an accident/incident arising from the operation of the railroad that results in the:

(1) Death of rail passenger or employee; or

(2) Death or injury of five or more persons.

(b) Each report must state the:

(1) Name of the railroad;

(2) Name, title, and telephone number of the individual making the report;

(3) Time, date, and location of accident/incident;

(4) Circumstances of the accident/incident; and

(5) Number of persons killed or injured.

[39 FR 43224, Dec. 11, 1974, as amended at 41 FR 15847, Apr. 15, 1976; 49 FR 48939, Dec. 17, 1984]

§ 225.11 Reporting of accidents/incidents.

Each railroad subject to this part shall submit to FRA a monthly report of all railroad accidents/incidents described in § 225.19. The report shall be made on the forms prescribed in § 225.21 in hard copy or, alternatively, by means of magnetic media or electronic submission, as prescribed in § 225.37, and shall be submitted within 30 days after expiration of the month during which the accidents/incidents occurred. Reports shall be completed as required by the current "FRA Guide for Preparing Accidents/Incidents Reports." A copy of this guide may be obtained

¹ The National Transportation Safety Board requires certain railroad accidents to be reported by telephone at the same toll free number (See Title 49, Code of Federal Regulations Part 840).

² FRA Locomotive Safety Standards require certain locomotive accidents to be reported by telephone at the same toll free number (See Title 49, Code of Federal Regulations, § 229.17.)

from the Office of Safety, RRS-22, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

[61 FR 30969, June 18, 1996]

§ 225.12 Rail Equipment Accident/Incident Reports alleging employee human factor as cause; Employee Human Factor Attachment; notice to employee; employee supplement.

(a) *Rail Equipment Accident/Incident Report alleging employee human factor as cause; completion of Employee Human Factor Attachment.* If, in reporting a rail equipment accident/incident to FRA, a railroad cites an employee human factor as the primary cause or a contributing cause of the accident; then the railroad that cited such employee human factor must complete, in accordance with instructions on the form and in the current "FRA Guide for Preparing Accident/Incident Reports," an Employee Human Factor Attachment form on the accident. For purposes of this section, "employee" is defined as a Worker on Duty—Employee, Employee not on Duty, Worker on Duty—Contractor, or Worker on Duty—Volunteer.

(b) *Notice to identified implicated employees.* Except as provided in paragraphs (e) and (f) of this section, for each employee whose act, omission, or physical condition was alleged by the railroad as the employee human factor that was the primary cause or a contributing cause of a rail equipment accident/incident and whose name was listed in the Employee Human Factor Attachment for the accident and for each such railroad employee of whose identity the railroad has actual knowledge, the alleging railroad shall—

(1) Complete part I, "Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor," of Form FRA F 6180.78 with information regarding the accident, in accordance with instructions on the form and in the current "FRA Guide for Preparing Accident/Incident Reports"; and

(2) Hand deliver or send by first class mail (postage prepaid) to that employee, within 45 days after the end of the month in which the rail equipment accident/incident occurred—

(i) A copy of Form FRA F 6180.78, "Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor; Employee Statement Supplementing Railroad Accident Report," with part I completed as to the applicable employee and accident;

(ii) A copy of the railroad's Rail Equipment Accident/Incident Report and Employee Human Factor Attachment on the rail equipment accident/incident involved; and

(iii) If the accident was also reportable as a highway-rail grade crossing accident/incident, a copy of the railroad's Highway-Rail Grade Crossing Accident/Incident Report on that accident.

(c) *Joint operations.* If a reporting railroad makes allegations under paragraph (a) of this section concerning the employee of another railroad, the employing railroad must promptly provide the name, job title, address, and medical status of any employee reasonably identified by the alleging railroad, if requested by the alleging railroad.

(d) *Late identification.* Except as provided in paragraphs (e) and (f) of this section, if a railroad is initially unable to identify a particular railroad employee whose act, omission, or physical condition was cited by the railroad as a primary or contributing cause of the accident, but subsequently makes such identification, the railroad shall submit a revised Employee Human Factor Attachment to FRA immediately, and shall submit the Notice described in paragraph (b) of this section to that employee within 15 days of when the revised report is to be submitted.

(e) *Deferred notification on medical grounds.* The reporting railroad has reasonable discretion to defer notification of implicated employees on medical grounds.

(f) *Implicated employees who have died by the time that the Notice is ready to be sent.* (1) If an implicated employee has died as a result of the accident, a Notice under paragraph (b) addressed to that employee must not be sent to any person.

(2) If an implicated employee has died of whatever causes by the time that the Notice is ready to be sent, no

Notice addressed to that employee is required.

(g) *Employee Statement Supplementing Railroad Accident Report (Supplements or Employee Supplements).* (1) Employee Statements Supplementing Railroad Accident Reports are voluntary, not mandatory; nonsubmission of a Supplement does not imply that the employee admits or endorses the railroad's conclusions as to cause or any other allegations.

(2) Although a Supplement is completely optional and not required, if an employee wishes to submit a Supplement and assure that, after receipt, it will be properly placed by FRA in a file with the railroad's Rail Equipment Accident/Incident Report and that it will be required to be reviewed by the railroad that issued the Notice, the Supplement must be made on part II of Form FRA F 6180.78 (entitled "Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor; Employee Statement Supplementing Railroad Accident Report"), following the instructions printed on the form. These instructions require that, within 35 days of the date that the Notice was hand delivered or sent by first class mail (postage prepaid) to the employee (except for good cause shown), the original of the Supplement be filed with FRA and a copy be hand delivered or sent by first class mail (postage prepaid) to the railroad that issued the Notice so that the railroad will have an opportunity to reassess its reports to FRA concerning the accident.

(3) Information that the employee wishes to withhold from the railroad must not be included in this Supplement. If an employee wishes to provide confidential information to FRA, the employee should not use the Supplement form (part II of Form FRA F 6180.78), but rather provide such confidential information by other means, such as a letter to the employee's collective bargaining representative, or to the Federal Railroad Administration, Office of Safety Assurance and Compliance, RRS-11, 400 Seventh Street, SW., Washington, DC 20590. The letter should include the name of the railroad making the allegations, the date and

place of the accident, and the rail equipment accident/incident number.

(h) *Willful false statements; penalties.* If an employee chooses to submit a Supplement to FRA, all of the employee's assertions in the Supplement must be true and correct to the best of the employee's knowledge and belief.

(i) Under 49 U.S.C. 21301, 21302, and 21304, any person who willfully files a false Supplement with FRA is subject to a civil penalty. See appendix A to this part.

(2) Any person who knowingly and willfully files a false Supplement is subject to a \$5,000 fine, or up to two years' imprisonment, or both, under 49 U.S.C. 21311.

[55 FR 37827, Sept. 13, 1990; 55 FR 39538, Sept. 27, 1990, as amended at 61 FR 30969, 30973, June 18, 1996]

§ 225.13 Late reports.

Whenever a railroad discovers that a report of an accident/incident, through mistake or otherwise, has been improperly omitted from or improperly reported on its regular monthly accident/incident report, a report covering this accident/incident together with a letter of explanation must be submitted immediately. Whenever a railroad receives a partially or fully completed Employee Statement Supplementing Railroad Accident Report (part II of Form FRA F 6180.78), in response to a Notice to Railroad Employee (part I of Form FRA F 6180.78) issued by the railroad and mailed or hand delivered to the employee, the railroad must promptly review that Supplement; based on that review, reassess the accuracy and validity of the railroad's Rail Equipment Accident/Incident Report and of any other reports and records required by this part concerning the same accident, including the Employee Human Factor Attachment; make all justified revisions to each of those reports and records; submit any amended reports to FRA; and submit a copy of any amended Rail Equipment Accident/Incident Report, Employee Human Factor Attachment, and Highway-Rail Grade Crossing Accident/Incident Report on the accident to the employee. A second notice under § 225.12 is not required for the employee. If an employee who was never

sent a notice under §225.12 for that accident is implicated in the revised Employee Human Factor Attachment, the railroad must follow the procedures of §225.12(d).

[39 FR 43224, Dec. 11, 1974, as amended at 55 FR 37828, Sept. 13, 1990; 61 FR 30973, June 18, 1996]

§225.15 Accidents/incidents not to be reported.

A railroad need not report:

(a) Casualties which occur at highway-rail grade crossings that do not involve the presence or operation of on-track equipment, or the presence of railroad employees then engaged in the operation of a railroad;

(b) Casualties in or about living quarters not arising from the operation of a railroad;

(c) Suicides as determined by a coroner or other public authority; or

(d) Attempted suicides.

[39 FR 43224, Dec. 11, 1974, as amended at 61 FR 30973, June 18, 1996]

§225.17 Doubtful cases; alcohol or drug involvement.

(a) The reporting officer of a railroad will ordinarily determine the reportability or nonreportability of an accident/incident after examining all evidence available. The FRA, however, cannot delegate authority to decide matters of judgment when facts are in dispute. In all such cases the decision shall be that of the FRA.

(b) Even though there may be no witness to an accident/incident, if there is evidence indicating that a reportable accident/incident may have occurred, a report of that accident/incident must be made.

(c) All accidents/incidents reported as "claimed but not admitted by the railroad" are given special examination by the FRA, and further inquiry may be ordered. Accidents/incidents accepted as reportable are tabulated and included in the various statistical statements issued by the FRA. The denial of any knowledge or refusal to admit responsibility by the railroad does not exclude those accidents/incidents from monthly and annual figures. Facts stated by a railroad that tend to refute the claim of an injured person are given consideration, and

when the facts seem sufficient to support the railroad's position, the case is not allocated to the reporting railroad.

(d)(1) In preparing a Rail Equipment Accident/Incident Report under this part, the railroad shall make such specific inquiry as may be reasonable under the circumstances into the possible involvement of alcohol or drug use or impairment in such accident or incident. If the railroad comes into possession of any information whatsoever, whether or not confirmed, concerning alleged alcohol or drug use or impairment by an employee who was involved in, or arguably could be said to have been involved in, the accident/incident, the railroad shall report such alleged use or impairment as provided in the current FRA Guide for Preparing Accident/Incident Reports. If the railroad is in possession of such information but does not believe that alcohol or drug impairment was the primary or contributing cause of the accident/incident, then the railroad shall include in the narrative statement of such report a brief explanation of the basis of such determination.

(2) For any train accident within the requirement for post-accident testing under §219.201 of this title, the railroad shall append to the Rail Equipment Accident/Incident Report any report required by §219.209(b) (pertaining to failure to obtain samples for post-accident toxicological testing).

(3) For any train or non-train incident, the railroad shall provide any available information concerning the possible involvement of alcohol or drug use or impairment in such accident or incident.

(4) In providing information required by this paragraph, a railroad shall not disclose any information concerning use of controlled substances determined by the railroad's Medical Review Officer to have been consistent with 49 CFR 219.103.

[39 FR 43224, Dec. 11, 1974, as amended at 50 FR 31579, Aug. 2, 1985; 54 FR 53279, Dec. 27, 1989]

§225.19 Primary groups of accidents/incidents.

(a) For reporting purposes reportable railroad accidents/incidents are divided into three groups:

§ 225.21

Group I—Highway-Rail Grade Crossing;
Group II—Rail Equipment;
Group III—Death, Injury and Occupational Illness.

(b) *Group I—Highway-rail grade crossing.* Each highway-rail grade crossing accident/incident must be reported to the FRA on Form FRA F 6180.57, regardless of the extent of damages or whether a casualty occurred. In addition, whenever a highway-rail grade crossing accident/incident results in damages greater than the current reporting threshold to railroad on-track equipment, signals, track, track structures, or roadbed, that accident/incident shall be reported to the FRA on Form FRA F 6180.54. For reporting purposes, damages include labor costs and all other costs to repair or replace in kind damaged on-track equipment, signals, track, track structures, or roadbed, but do not include the cost of clearing a wreck.

(c) *Group II—Rail Equipment.* Rail equipment accidents/incidents are collisions, derailments, fires, explosions, acts of God, or other events involving the operation of railroad on-track equipment, signals, track, track equipment (standing or moving) that result in damages greater than the current reporting threshold (*i.e.* \$6,300 for calendar years 1991 through 1996, \$6,500 for calendar year 1997, and \$6,600 for calendar years 1998 through 1999) to railroad on-track equipment, signals, tracks, track structures, or roadbed, including labor costs and the costs for acquiring new equipment and material. Each rail equipment accident/incident must be reported to the FRA on Form FRA F 6180.54. If the property of more than one railroad is involved in an accident/incident, the reporting threshold is calculated by including the damages suffered by all of the railroads involved. See §225.23, Joint Operations. The reporting threshold will be reviewed periodically and will be adjusted every year.

(d) *Group III—Death, injury, or occupational illness.* Each event arising from the operation of a railroad shall be reported on Form FRA F 6180.55a if it results in:

- (1) Death to any person;
- (2) Injury to any person that requires medical treatment;

49 CFR Ch. II (10–1–99 Edition)

(3) Injury to a railroad employee that results in:

- (i) A day away from work;
 - (ii) Restricted work activity or job transfer; or
 - (iii) Loss of consciousness; or
- (4) Occupational illness of a railroad employee.

(e) The reporting threshold is \$6,300 for calendar years 1991 through 1996. The reporting threshold is \$6,500 for calendar year 1997 and \$6,500 for calendar years 1998 through 1999. The procedure for determining the reporting threshold for calendar year 1997 and later appears as appendix B to part 225.

(Secs. 11144 and 11145, Subtitle IV of Title 49 (49 U.S.C. 11144 and 11145); secs. 1 and 6, Accident Reports Act (45 U.S.C. 431 and 437); sec. 6(e) and (f), Department of Transportation Act (49 U.S.C. 1655(e) and (f)); sec. 1.49(g) and (m), regulations of the Office of the Secretary of Transportation (49 CFR 1.49(g) and (m))

[39 FR 43224, Dec. 11, 1974, as amended at 41 FR 50691, Nov. 17, 1976; 42 FR 1221, Jan. 6, 1977; 47 FR 56358, Dec. 16, 1982; 51 FR 47019, Dec. 30, 1986; 53 FR 48548, Dec. 1, 1988; 55 FR 52847, Dec. 21, 1990; 61 FR 30969, 30973, June 18, 1996; 61 FR 60634, Nov. 29, 1996; 61 FR 67490, Dec. 23, 1996; 63 FR 63676, Dec. 2, 1997; 63 FR 71791, Dec. 30, 1998]

§225.21 Forms.

The following forms and copies of the FRA Guide for Preparing Accident/Incident Reports may be obtained from the Office of Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590.

(a) *Form FRA F 6180.54—Rail Equipment Accident/Incident Report.* Form FRA F 6180.54 shall be used to report each reportable rail equipment accident/incident which occurred during the preceding month.

(b) *Form FRA F 6180.55—Railroad Injury and Illness Summary.* Form FRA F 6180.55 must be filed each month, even though no reportable accident/incident occurred during the month covered. Each report must include an oath or verification, made by the proper officer of the reporting railroad, as provided for attestation on the form. If no reportable accident/incident occurred during the month, that fact must be stated on this form. All railroads subject to this part, shall show on this form the total number of freight train miles, passenger train miles, yard

switching train miles, and other train miles run during the month.

(c) *Form FRA 6180.55a—Railroad Injury and Illness (Continuation Sheet)*. Form FRA 6180.55a shall be used to report all reportable fatalities, injuries and occupational illnesses that occurred during the preceding month.

(d) *Form FRA 6180.56—Annual Railroad Report of Manhours by State*. Form FRA 6180.56 shall be submitted as part of the monthly Railroad Injury and Illness Summary (Form FRA F 6180.55) for the month of December of each year.

(e) *Form FRA F 6180.57—Highway-Rail Grade Crossing Accident/Incident Report*. Form FRA F 6180.57 shall be used to report each highway-rail grade crossing accident/incident which occurred during the preceding month.

(f) *Form FRA F 6180.81—Employee Human Factor Attachment*. Form FRA F 6180.81 shall be used by railroads, as a supplement to the Rail Equipment Accident/Incident Report (Form FRA F 6180.54), in reporting rail equipment accidents/incidents that they attribute to an employee human factor. This form shall be completed in accordance with instructions printed on the form and in the current "FRA Guide for Preparing Accident/Incident Reports." The form shall be attached to the Rail Equipment Accident/Incident Report and shall be submitted within 30 days after expiration of the month in which the accident/incident occurred.

(g) *Form FRA F 6180.78—Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor; Employee Statement Supplementing Railroad Accident Report*. When a railroad alleges, in the Employee Human Factor Attachment to a Rail Equipment Accident/Incident Report, that the act, omission, or physical condition of a specific employee was a primary or contributing cause of the rail equipment accident/incident, the railroad shall complete part I of Form FRA F 6180.78 to notify each such employee identified that the railroad has made such allegation and that the employee has the right to submit a statement to FRA. The railroad shall then submit the entire form, parts I and II, to the employee. The Employee Statement Supplementing Railroad Accident Report (Employee Supple-

ment) is completely at the option of the employee; however, if the employee desires to make a statement about the accident that will become part of the railroad's Rail Equipment Accident/Incident Report, the employee shall complete the Employee Supplement form (part II of Form FRA F 6180.78) and shall then submit the original of the entire form, parts I and II, and any attachments, to FRA and submit a copy of the same to the railroad that issued the Notice in part I.

(h) *Form FRA F 6180.98—Railroad Employee Injury and/or Illness Record*. Form FRA F 6180.98 or an alternative railroad-designed record shall be used by the railroads to record all reportable and accountable injuries and illnesses to railroad employees for each establishment. This record shall be completed and maintained in accordance with the requirements set forth in § 225.25.

(i) *Form FRA F 6180.97—Initial Rail Equipment Accident/Incident Record*. Form FRA F 6180.97 or an alternative railroad-designed record shall be used by the railroads to record all reportable and accountable rail equipment accidents/incidents for each establishment. This record shall be completed and maintained in accordance with the requirements set forth in § 225.25.

[39 FR 43224, Dec. 11, 1974, as amended at 42 FR 1221, Jan. 6, 1977; 49 FR 48939, Dec. 17, 1984; 55 FR 37828, Sept. 13, 1990; 61 FR 30969, 30973, June 18, 1996]

§ 225.23 Joint operations.

(a) Any reportable death or injury to an employee arising from an accident/incident involving joint operations must be reported on Form FRA F 6180.55a by the employing railroad.

(b) In all cases involving joint operations, each railroad must report on Form FRA F 6180.55a the casualties to all persons on its train or other on-track equipment. Casualties to railroad employees must be reported by the employing railroad regardless of whether the employees were on or off duty. Casualties to all other persons not on trains or on-track equipment must be reported on Form FRA F 6180.55a by the railroad whose train or equipment is involved. Any person found unconscious or dead, if such condition arose

from the operation of a railroad, on or adjacent to the premises or right-of-way of the railroad having track maintenance responsibility must be reported by that railroad on Form FRA F 6180.55a.

(c) In rail equipment accident/incident cases involving joint operations, the railroad responsible for carrying out repairs to, and maintenance of, the track on which the accident/incident occurred, and any other railroad directly involved in the accident/incident, each must report the accident/incident on Form FRA F 6180.54.

[39 FR 43224, Dec. 11, 1974, as amended at 42 FR 1221, Jan. 6, 1977]

§ 225.25 Recordkeeping.

(a) Each railroad shall maintain either the Railroad Employee Injury and/or Illness Record (Form FRA F 6180.98) or an alternative railroad-designed record as described in paragraph (b) of this section of all reportable and accountable injuries and illnesses of its employees that arise from the operation of the railroad for each railroad establishment where such employees report to work, including, but not limited to, an operating division, general office, and major installation such as a locomotive or car repair or construction facility.

(b) The alternative railroad-designed record may be used in lieu of the Railroad Employee Injury and/or Illness Record (Form FRA F 6180.98) described in paragraph (a) of this section. Any such alternative record shall contain all of the information required on the Railroad Employee Injury and/or Illness Record. Although this information may be displayed in a different order from that on the Railroad Employee Injury and/or Illness Record, the order of the information shall be consistent from one such record to another such record. The order chosen by the railroad shall be consistent for each of the railroad's reporting establishments. Railroads may list additional information on the alternative record beyond the information required on the Railroad Employee Injury and/or Illness Record. The alternative record shall contain, at a minimum, the following information:

(1) Name of railroad;

- (2) Case/incident number;
- (3) Full name of railroad employee;
- (4) Date of birth of railroad employee;
- (5) Gender of railroad employee;
- (6) Social security number of railroad employee;
- (7) Date the railroad employee was hired;
- (8) Home address of railroad employee; include the street address, city, State, ZIP code, and home telephone number with area code;
- (9) Name of facility where railroad employee normally reports to work;
- (10) Address of facility where railroad employee normally reports to work; include the street address, city, State, and ZIP code;
- (11) Job title of railroad employee;
- (12) Department assigned;
- (13) Specific site where accident/incident/exposure occurred; include the city, county, State, and ZIP code;
- (14) Date and time of occurrence; military time or AM/PM;
- (15) Time employee's shift began; military time or AM/PM;
- (16) Whether employee was on premises when injury occurred;
- (17) Whether employee was on or off duty;
- (18) Date and time when employee notified company personnel of condition; military time or AM/PM;
- (19) Name and title of railroad official notified;
- (20) Description of the general activity this employee was engaged in prior to the injury/illness/condition;
- (21) Description of all factors associated with the case that are pertinent to an understanding of how it occurred. Include a discussion of the sequence of events leading up to it; and the tools, machinery, processes, material, environmental conditions, etc., involved;
- (22) Description, in detail, of the injury/illness/condition that the employee sustained, including the body parts affected. If a recurrence, list the date of the last occurrence;
- (23) Identification of all persons and organizations used to evaluate or treat the condition, or both. Include the facility, provider and complete address;

(24) Description of all procedures, medications, therapy, etc., used or recommended for the treatment of the condition.

(25) Extent and outcome of injury or illness to show the following as applicable:

- (i) Fatality—enter date of death;
 - (ii) Restricted work; number of days; beginning date;
 - (iii) Occupational illness; date of initial diagnosis;
 - (iv) Instructions to obtain prescription medication, or receipt of prescription medication;
 - (v) If missed one or more days of work or next shift, provide number of work days; and beginning date;
 - (vi) Medical treatment beyond “first aid”;
 - (vii) Hospitalization for treatment as an inpatient;
 - (viii) Multiple treatments or therapy sessions;
 - (ix) Loss of consciousness;
 - (x) Transfer to another job or termination of employment;
- (26) Each railroad shall indicate if the Railroad Injury and Illness Summary (Continuation Sheet) (FRA Form F 6180.55a) has been filed with FRA for the injury or illness. If FRA Form F 6180.55a was not filed with FRA, then the railroad shall provide an explanation of the basis for its decision.

(27) The reporting railroad shall indicate if the injured or ill railroad employee was provided an opportunity to review his or her file; and

(28) The reporting railroad shall identify the preparer’s name; title; telephone number with area code; and the date the log entry was completed.

(c) Each railroad shall provide the employee, upon request, a copy of either the completed Railroad Employee Injury and/or Illness Record (Form FRA F 6180.98) or the alternative railroad-designed record as described in paragraphs (a) and (b) of this section as well as a copy of forms or reports required to be maintained or filed under this part pertaining to that employee’s own work-related injury or illness.

(d) Each railroad shall maintain the Initial Rail Equipment Accident/Incident Record (Form FRA F 6180.97) or an alternative railroad-designed record as described in paragraph (e) of this sec-

tion of reportable and accountable collisions, derailments, fires, explosions, acts of God, or other events involving the operation of railroad on-track equipment, signals, track, or track equipment (standing or moving) that result in damages to railroad on-track equipment, signals, tracks, track structures, or roadbed, including labor costs and all other costs for repairs or replacement in kind for each railroad establishment where workers report to work, including, but not limited to, an operating division, general office, and major installation such as a locomotive or car repair or construction facility.

(e) The alternative railroad-designed record may be used in lieu of the Initial Rail Equipment Accident/Incident Record (Form FRA F 6180.97). Any such alternative record shall contain all of the information required on the Initial Rail Equipment Accident/Incident Record. Although this information may be displayed in a different order from that on the Initial Rail Equipment Accident/Incident Record, the order of the information shall be consistent from one such record to another such record. The order chosen by the railroad shall be consistent for each of the railroad’s reporting establishments. Railroads may list additional information in the alternative record beyond the information required on the Initial Rail Equipment Accident/Incident Record. The alternative record shall contain, at a minimum, the following information:

- (1) Date and time of accident;
- (2) Reporting railroad, and accident/incident number;
- (3) Other railroad, if applicable, and other railroad’s accident/incident number;
- (4) Railroad responsible for track maintenance, and that railroad’s incident number;
- (5) Type of accident/incident (derailment, collision, etc.);
- (6) Number of cars carrying hazardous materials that derailed or were damaged; and number of cars carrying hazardous materials that released product;
- (7) Division;
- (8) Nearest city or town;
- (9) State;

- (10) Milepost (to the nearest tenth);
- (11) Specific site;
- (12) Speed (indicate if actual or estimate);
- (13) Train number or job number;
- (14) Type of equipment (freight, passenger, yard switching, etc.);
- (15) Type of track (main, yard, siding, industry);
- (16) Total number of locomotives in train;
- (17) Total number of locomotives that derailed;
- (18) Total number of cars in train;
- (19) Total number of cars that derailed;
- (20) Total amount of damage in dollars to equipment based on computations as described in the "FRA Guide for Preparing Accidents/Incidents Reports";
- (21) Total amount of damage in dollars to track, signal, way and structures based on computations as described in the "FRA Guide for Preparing Accidents/Incidents Reports";
- (22) Primary cause;
- (23) Contributing cause;
- (24) Persons injured and persons killed, broken down into the following classifications: worker on duty—employee; employee not on duty; passenger on train; nontrespasser—on railroad property; trespasser; worker on duty—contractor; contractor—other; worker on duty—volunteer; volunteer—other; and nontrespasser—off railroad property;
- (25) Narrative description of the accident;
- (26) Whether the accident/incident was reported to FRA;
- (27) Preparer's name, title, telephone number with area code, and signature; and
- (28) Date the report was completed.

(f) Each railroad shall enter each reportable and accountable injury and illness and each reportable and accountable rail equipment accident/incident on the appropriate record, as required by paragraphs (a) through (e) of this section, as early as practicable but no later than seven working days after receiving information or acquiring knowledge that an injury or illness or rail equipment accident/incident has occurred.

(g) The records required under paragraphs (a) through (e) of this section may be maintained at the local establishment or, alternatively, at a centralized location. If the records are maintained at a centralized location, but not through electronic means, then a paper copy of the records that is current within 35 days of the month to which it applies shall be available for that establishment. If the records are maintained at a centralized location through electronic means, then the records for that establishment shall be available for review in a hard copy format within four business hours of FRA's request. FRA recognizes that circumstances outside the railroad's control may preclude it from fulfilling the four-business-hour time limit. In these circumstances, FRA will not assess a monetary penalty against the railroad for its failure to provide the requested documentation provided the railroad made a reasonable effort to correct the problem.

(h) Except as provided in paragraph(h)(15) of this section, a listing of all injuries and occupational illnesses reported to FRA as having occurred at an establishment shall be posted in a conspicuous location at that establishment, within 30 days after the expiration of the month during which the injuries and illnesses occurred, if the establishment has been in continual operation for a minimum of 90 calendar days. If the establishment has not been in continual operation for a minimum of 90 calendar days, the listing of all injuries and occupational illnesses reported to FRA as having occurred at the establishment shall be posted, within 30 days after the expiration of the month during which the injuries and illnesses occurred, in a conspicuous location at the next higher organizational level establishment, such as one of the following: an operating division headquarters; a major classification yard or terminal headquarters; a major equipment maintenance or repair installation, *e.g.*, a locomotive or rail car repair or construction facility; a railroad signal and maintenance-of-way division headquarters; or a central location where track or signal maintenance employees are assigned as a headquarters or receive work assignments.

These examples include facilities that are generally major facilities of a permanent nature where the railroad generally posts or disseminates company informational notices and policies, *e.g.*, the policy statement in the internal control plan required by § 225.33 concerning harassment and intimidation. At a minimum, "establishment" posting is required and shall include locations where a railroad reasonably expects its employees to report during a 12-month period and to have the opportunity to observe the posted list containing any reportable injuries or illnesses they have suffered during the applicable period. This listing shall be posted and shall remain continuously displayed for the next twelve consecutive months. Incidents reported for employees at that establishment shall be displayed in date sequence. The listing shall contain, at a minimum, the information specified in paragraphs (h)(1) through (14) of this section.

- (1) Name and address of the establishment;
- (2) Calendar year of the cases being displayed;
- (3) Incident number used to report case;
- (4) Date of the injury or illness;
- (5) Location of incident;
- (6) Regular job title of employee injured or ill;
- (7) Description of the injury or condition;
- (8) Number of days employee absent from work at time of posting;
- (9) Number of days of work restriction for employee at time of posting;
- (10) If fatality—enter date of death;
- (11) Annual average number of railroad employees reporting to this establishment;
- (12) Preparer's name, title, telephone number with area code, and signature (or, in lieu of signing each establishment's list of reportable injuries and illnesses, the railroad's preparer of this monthly list may sign a cover sheet or memorandum which contains a list of each railroad establishment for which a monthly list of reportable injuries and illnesses has been prepared. This cover memorandum shall be signed by the preparer and shall have attached to it a duplicate copy of each establishment's list of monthly reportable injuries

and illnesses. The preparer of the monthly lists of reportable injuries and illnesses shall mail or send by facsimile each establishment's list to the establishment in the time frame prescribed in paragraph (h) of this section.); and

(13) Date the record was completed.

(14) When there are no reportable injuries or occupational illnesses associated with an establishment for that month, the listing shall make reference to this fact.

(15) The railroad is permitted not to post information on an injury or illness only if the employee who incurred the injury or illness makes a request in writing to the railroad's reporting officer that his or her particular injury or illness not be posted.

[61 FR 30970, June 18, 1996, as amended at 61 FR 59371, Nov. 22, 1996; 61 FR 67491, Dec. 23, 1996]

§ 225.27 Retention of records.

(a) Each railroad shall retain the Railroad Employee Injury and/or Illness Record and the Monthly List of Injuries and Illnesses required by § 225.25 for at least five years after the end of the calendar year to which they relate. Each railroad shall retain the Initial Rail Equipment Accident/Incident Record required by § 225.25 for at least two years after the end of the calendar year to which it relates. Each railroad must retain the Employee Human Factor Attachments required by § 225.12, the written notices to employees required by § 225.12, and the Employee Statements Supplementing Railroad Accident Reports described in § 225.12(g) that have been received by the railroad for at least 2 years after the end of the calendar year to which they relate.

(b) Each railroad must retain a duplicate of each form it submits to FRA under § 225.21, for at least 2 years after the calendar year to which it relates.

[39 FR 43224, Dec. 11, 1974, as amended at 55 FR 37828, Sept. 13, 1990; 61 FR 30971, June 18, 1996; 61 FR 67491, Dec. 23, 1996]

§ 225.29 Penalties.

Any person (an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or

other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least \$500 and not more than \$11,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed \$22,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. See appendix A to this part for a statement of agency civil penalty policy. A person may also be subject to the criminal penalties provided for in 49 U.S.C. 21311.

[53 FR 28601, July 28, 1988, as amended at 53 FR 52931, Dec. 29, 1988; 61 FR 30971, June 18, 1996; 63 FR 11622, Mar. 10, 1998]

§ 225.31 Investigations.

(a) It is the policy of the FRA to investigate rail transportation accidents/incidents which result in the death of a railroad employee or the injury of five or more persons. Other accidents/incidents are investigated when it appears that an investigation would substantially serve to promote railroad safety.

(b) FRA representatives are authorized to investigate accidents/incidents and have been issued credentials authorizing them to inspect railroad records and properties. They are authorized to obtain all relevant information concerning accidents/incidents under investigation, to make inquiries of persons having knowledge of the facts, conduct interviews and inquiries, and attend as an observer, hearings conducted by railroads. When necessary to carry out an investigation, the FRA may authorize the issuance of subpoenas to require the production of records and the giving of testimony.

(c) Whenever necessary, the FRA will schedule a public hearing before an authorized hearing officer, in which event

testimony will be taken under oath, a record made, and opportunity provided to question witnesses.

(d) When necessary in the conduct of an investigation, the Federal Railroad Administrator may require autopsies and other tests of the remains of railroad employees who die as a result of an accident/incident.

(e) Information obtained through FRA accident investigations may be published in public reports or used for other purposes FRA deems to be appropriate.

(f) Section 20903 of title 49 of the United States Code provides that no part of a report of an accident investigation under section 20902 of title 49 of the United States Code may be admitted as evidence or used for any purpose in any suit or action for damages growing out of any matter mentioned in the accident investigation report.

[39 FR 43224, Dec. 11, 1974, as amended at 61 FR 30971, June 18, 1996]

§ 225.33 Internal Control Plans.

(a) Each railroad shall adopt and comply with a written Internal Control Plan that shall be maintained at the office where the railroad's reporting officer conducts his or her official business. Each railroad shall amend its Internal Control Plan, as necessary, to reflect any significant changes to the railroad's internal reporting procedures. The Internal Control Plan shall be designed to maintain absolute accuracy and shall include, at a minimum, each of the following components:

(1) A policy statement declaring the railroad's commitment to complete and accurate reporting of all accidents, incidents, injuries, and occupational illnesses arising from the operation of the railroad, to full compliance with the letter and spirit of FRA's accident reporting regulations, and to the principle, in absolute terms, that harassment or intimidation of any person that is calculated to discourage or prevent such person from receiving proper medical treatment or from reporting such accident, incident, injury or illness will not be permitted or tolerated and will result in some stated disciplinary action against any employee, supervisor, manager, or officer of the

railroad committing such harassment or intimidation.

(2) The dissemination of the policy statement; complaint procedures. Each railroad shall provide to all employees, supervisory personnel, and management the policy statement described in paragraph (a)(1). Each railroad shall have procedures to process complaints from any person about the policy stated in paragraph (a)(1) being violated, and to impose the appropriate prescribed disciplinary actions on each employee, supervisor, manager, or officer of the railroad found to have violated the policy. These procedures shall be disclosed to railroad employees, supervisors, managers, and officers. The railroad shall provide "whistle blower" protection to any person subject to this policy, and such policy shall be disclosed to all railroad employees, supervisors and management.

(3) Copies of internal forms and/or a description of the internal computer reporting system used for the collection and internal recording of accident and incident information.

(4) A description of the internal procedures used by the railroad for the processing of forms and/or computerized data regarding accident and incident information.

(5) A description of the internal review procedures applicable to accident and incident information collected, and reports prepared by, the railroad's safety, claims, medical and/or other departments engaged in collecting and reporting accident and incident information.

(6) A description of the internal procedures used for collecting cost data and compiling costs with respect to accident and incident information.

(7) A description of applicable internal procedures for ensuring adequate communication between the railroad department responsible for submitting accident and incident reports to FRA and any other department within the railroad responsible for collecting, receiving, processing and reporting accidents and incidents.

(8) A statement of applicable procedures providing for the updating of accident and incident information prior to reporting to FRA and a statement of applicable procedures providing for the

amendment of accident and incident information as specified in the "FRA Guide for Preparing Accidents/Incidents Reports."

(9) A statement that specifies the name and title of the railroad officer responsible for auditing the performance of the reporting function; a statement of the frequency (not less than once per calendar year) with which audits are conducted; and identification of the site where the most recent audit report may be found for inspection and photocopying.

(10)(i) A brief description of the railroad organization, including identification of:

(A) All components that regularly come into possession of information pertinent to the preparation of reports under this part (*e.g.*, medical, claims, and legal departments; operating, mechanical, and track and structures departments; payroll, accounting, and personnel departments);

(B) The title of each railroad reporting officer;

(C) The title of each manager of such components, by component; and

(D) All officers to whom managers of such components are responsible, by component.

(ii) A current organization chart satisfies paragraphs (a)(10)(i) (B), (C), and (D) of this section.

(b) [Reserved]

[61 FR 30972, June 18, 1996, as amended at 61 FR 59371, Nov. 22, 1996; 61 FR 67491, Dec. 23, 1996]

§ 225.35 Access to records and reports.

Each railroad subject to this part shall have at least one location, and shall identify each location, where any representative of the Federal Railroad Administration or of a State agency participating in investigative and surveillance activities under part 212 of this chapter or any other authorized representative, has centralized access to a copy of any record and report required under this part, for examination and photocopying in a reasonable manner during normal business hours.

Each railroad subject to this part shall also provide to any representative of the Federal Railroad Administration or of a State agency participating in

investigative or and surveillance activities under part 212 of this chapter or any other authorized representative access to relevant medical and claims records for examination and photocopying in a reasonable manner during normal business hours. Such representatives shall display proper credentials when requested. Each railroad shall identify the locations where a copy of any record and report required under this part is accessible for inspection and photocopying by maintaining a list of such establishment locations at the office where the railroad's reporting officer conducts his or her official business. A copy of any record and report required under this part shall be accessible within four business hours after the request. FRA will not assess a monetary penalty against the railroad for its failure to provide the requested documentation when circumstances outside the railroad's control preclude it from fulfilling the four-business-hour time limit and the railroad has made a reasonable effort to correct the problem. Should a railroad assert a legal privilege with respect to certain claims and medical records, failure to provide FRA access to such records would not constitute a violation of this section. FRA retains the right to issue a subpoena to obtain such records under 49 U.S.C. §§20107 and 20902 and §§209.7(a) and 225.31(b) of this title, and the railroad may contest that subpoena.

[61 FR 30972, June 18, 1996, as amended at 61 FR 59371, Nov. 22, 1996]

§225.37 Magnetic media transfer and electronic submission.

(a) A railroad has the option of submitting the following reports, updates, and amendments by way of magnetic media (computer diskette or magnetic tape), or by means of electronic submission over telephone lines or other means:

- (1) The Rail Equipment Accident/Incident Report (Form FRA F 6180.54);
- (2) the Railroad Injury and Illness Summary (Form FRA F 6180.55);
- (3) the Railroad Injury and Illness Summary (Continuation Sheet) (Form FRA F 6180.55a);

(4) the Highway-Rail Grade Crossing Accident/Incident Report (Form FRA F 6180.57); and

(5) the Batch Control Form (Form FRA F 6180.99).

(b) Each railroad utilizing the magnetic media option shall submit to FRA the following:

(1) the computer diskette or magnetic tape;

(2) the Batch Control Form (Form FRA F 6180.99); and

(3) a notarized hard copy of the Railroad Injury and Illness Summary (Form FRA F 6180.55), signed by the railroad's reporting officer.

(c) Each railroad utilizing the electronic submission option shall submit to FRA the following:

(1) the Batch Control Form (Form FRA F 6180.99) which is submitted to an FRA-designated computer; and

(2) a notarized hard copy of the Railroad Injury and Illness Summary (Form FRA F 6180.55), signed by the railroad's reporting officer.

(d) Each railroad employing either the magnetic media or electronic submission option, shall submit its monthly reporting data for the reports identified in paragraph (a) of this section in a year-to-date file format as described in the "FRA Guide for Preparing Accidents/Incidents Reports."

(e) In addition to fulfilling the requirements stated in paragraph (b) through (d) of this section, each railroad initially utilizing either the magnetic media or electronic submission option, shall submit the hard copy report(s) for each accident/incident it reports by such means. FRA will continually review the railroad's submitted hard copy reports against the data it has submitted electronically, or by means of magnetic media. Once the magnetic media or electronic submission is in *total* agreement with the submitted hard copies of the reports for *three* consecutive reporting months, FRA will notify the railroad, in writing, that submission of the hard copy reports, except for the notarized Railroad Injury and Illness Summary, is no longer required.

[61 FR 30972, June 18, 1996]

APPENDIX A TO PART 225—SCHEDULE OF CIVIL PENALTIES ¹

Section (including computer code, if applicable)	Violation	Willful violation
225.9 Telephonic reports of certain accidents/incidents	\$1,000	\$2,000
225.11 Reports of accidents/ incidents	2,500	5,000
225.12(a):		
Failure to file Railroad Employee Human Factor Attachment properly.		
(1) Employee identified	2,500	5,000
(2) No employee identified	1,000	2,000
225.12(b):		
(1) Failure to notify employee properly	2,500	5,000
(2) Notification of employee not involved in accident	2,500	5,000
225.12(c):		
Failure of employing railroad to provide requested information properly	1,000	2,000
225.12(d):		
(1) Failure to revise report when identity becomes known	2,500	5,000
(2) Failure to notify after late identification	2,500	5,000
225.12(f)(1):		
Submission of notice if employee dies as result of the reported accident	2,500	5,000
225.12(g):		
Willfully false accident statement by employee		5,000
225.13 Late reports	2,500	5,000
225.17(d) Alcohol or drug involvement	2,500	5,000
225.23 Joint operations	(¹)	(¹)
225.25 Recordkeeping	2,500	5,000
225.27 Retention of records	1,000	2,000
225.33:		
(1) Failure to adopt the Internal Control Plan	2,500	5,000
(2) Inaccurate reporting due to failure to comply with the Internal Control Plan	2,500	5,000
(3) Failure to comply with the intimidation/harassment policy in the Internal Control Plan ...	2,500	5,000
225.35 Access to records and reports	2,500	5,000

¹ A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$22,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A. A failure to comply with § 225.23 constitutes a violation of § 225.11. For purposes of §§ 225.25 and 225.27 of this part, each of the following constitutes a single act of noncompliance: (1) a missing or incomplete log entry for a particular employee's injury or illness; or (2) a missing or incomplete log record for a particular rail equipment accident or incident. Each day a violation continues is a separate offense.

[61 FR 30973, June 18, 1996, as amended at 63 FR 11622, Mar. 10, 1998]

APPENDIX B TO PART 225—PROCEDURE FOR DETERMINING REPORTING THRESHOLD

1. Data from the U.S. Department of Labor, Bureau of Labor Statistics (BLS), LABSTAT Series Reports are used in the calculation. The equation used to adjust the reporting threshold uses the average hourly earnings reported for Class I railroads and Amtrak and an overall railroad equipment cost index determined by the BLS. The two factors are weighted equally.

2. For the wage component, LABSTAT Series Report, Standard Industrial Classification (SIC) code 4011 for Class I Railroad Average Hourly Earnings is used.

3. For the equipment component, LABSTAT Series Report, Producer Price Index (PPI) Series WPU 144 for Railroad Equipment is used.

4. In the month of October, final data covering the 12-month period ending with the

month of June are obtained from BLS. The 12 monthly figures are totaled and divided by 12 to produce monthly averages to be used in computing the projected annual (12-month) average for the next calendar year.

5. The wage data are reported in terms of dollars earned per hour, while the equipment cost data are indexed to a base year of 1982.

6. The procedure for adjusting the reporting threshold is shown in the formula below. The wage component appears as a fractional change relative to the prior year, while the equipment component is a difference of two percentages which must be divided by 100 to present it in a consistent fractional form. After performing the calculation, the result is rounded to the nearest \$100.

7. The current weightings represent the general assumption that damage repair costs, at levels at or near the threshold, are split approximately evenly between labor and materials.

8. Formula:

$$\text{New Threshold} = \text{Prior Threshold} \times \left\{ 1 + 0.5 \frac{(W_n - W_p)}{W_p} + 0.5 \frac{(E_n - E_p)}{100} \right\}$$

Where:

Prior Threshold = \$6,600 (for rail equipment accidents/incidents that occur during calendar year 1998)

W_n = New average hourly wage rate (\$) = 18.085000

W_p = Prior average hourly wage rate (\$) = 17.990833

E_n = New equipment average PPI value = 134.49166

E_p = Prior equipment average PPI value = 135.91666

9. The result of these calculations is \$6,570.2472. Since the result is rounded to the nearest \$100, the new reporting threshold for rail equipment accidents/incidents that occur during calendar year 1999 remains at \$6,600.

[62 FR 63676, Dec. 2, 1997, as amended at 63 FR 71791, Dec. 30, 1998]

PART 228—HOURS OF SERVICE OF RAILROAD EMPLOYEES

Subpart A—General

Sec.

228.1 Scope.

228.3 Application.

228.5 Definitions.

Subpart B—Records and Reporting

228.7 Hours of duty.

228.9 Railroad records; general.

228.11 Hours of duty records.

228.17 Dispatcher's record of train movements.

228.19 Monthly reports of excess service.

228.21 Civil penalty.

228.23 Criminal penalty.

Subpart C—Construction of Employee Sleeping Quarters

228.101 Distance requirement; definitions.

228.103 Approval procedure: construction within one-half mile (2,640 feet) (804 meters).

228.105 Additional requirements; construction within one-third mile (1,760 feet) (536 meters) of certain switching.

228.107 Action on petition.

APPENDIX A TO PART 228—REQUIREMENTS OF THE HOURS OF SERVICE ACT: STATEMENT OF AGENCY POLICY AND INTERPRETATION

APPENDIX B TO PART 228—SCHEDULE OF CIVIL PENALTIES

APPENDIX C TO PART 228—GUIDELINES FOR CLEAN, SAFE, AND SANITARY RAILROAD PROVIDED CAMP CARS

AUTHORITY: 49 U.S.C. 20103, 20107, 21101–21108, and 49 CFR 1.49.

SOURCE: 37 FR 12234, June 21, 1972, unless otherwise noted.

Subpart A—General

§ 228.1 Scope.

This part—

(a) Prescribes reporting and record keeping requirements with respect to the hours of service of certain railroad employees; and

(b) Establishes standards and procedures concerning the construction or reconstruction of employee sleeping quarters.

[43 FR 31012, July 19, 1978]

§ 228.3 Application.

(a) Except as provided in paragraph (b), this part applies to all railroads.

(b) This part does not apply to:

(1) A railroad that operates only on track inside an installation which is not part of the general railroad system of transportation; or

(2) Rapid transit operations in an urban area that are not connected with the general railroad system of transportation.

[54 FR 33229, Aug. 14, 1989]

§ 228.5 Definitions.

As used in this part:

(a) *Administrator* means the Administrator of the Federal Railroad Administration or any person to whom he delegated authority in the matter concerned.

(b) *Carrier, common carrier, and common carrier engaged in interstate or foreign commerce by railroad* mean railroad as that term is defined below.

(c) *Employee* means an individual employed by the common carrier who (1) is actually engaged in or connected